

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE GUARDIAN NEWS, INC.,

Plaintiff,

-against-

MICHAEL J. MARTINO, individually,
LUIGI MARCOCCIA, individually,
TONY E. SAYEGH, Jr., individually,
STEVEN A. ECKLOND, individually,
JOHN FITZPATRICK, individually,
SUSAN CIAMARRA, individually,
ROBERT MASCIANICA, individually,
JOHN D. CAVALLARO, individually,
and the VILLAGE OF TUCKAHOE,
New York,

07 Civ. 11251 (CLB)

**AFFIDAVIT OF SELIM
ZHERKA IN SUPPORT
OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Defendant.

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Plaintiff SELIM ZHERKA, being duly sworn, deposes and says::

1. I am the owner of Westchester Guardian News, Inc. and as such I am the owner and publisher of The Westchester Guardian, a weekly newspaper that is distributed free of charge primarily by means of newsrack boxes that are placed in the various municipalities situated in the County of Westchester, New York.

2. On or about August 1, 2006, I along with employees of the Westchester Guardian News, Inc. installed on public property within the Village a number of newsracks containing, for free distribution, multiple copies of the then most recent edition of The Westchester Guardian. Those newsracks, and the newspapers contained within them, were then confiscated by Defendants or persons acting on their behalf as

indicated in the below-referenced e-mail and as admitted their response to interrogatories and document production requests.

3. Shortly thereafter I along with said employees again installed on public property within the Village an additional number of newsracks containing, for free distribution, multiple copies of the then most recent edition of The Westchester Guardian. Those newsracks, and the newspapers contained within them, in turn were also confiscated by Defendants or persons acting on their behalf as indicated in the below-referenced e-mail and the referenced admission.

5. Within a matter of weeks I along with said employees once again installed on public property within the Village more newsracks containing, for free distribution, multiple copies of the then most recent edition of The Westchester Guardian. Those newsracks, and the newspapers contained within them, were then confiscated by the Defendants or persons acting on their behalf as referenced *supra*.

6. Following a final installation by me and said employees of newsracks on public property within the Village, and the confiscation of them along with the newspapers contained in them as indicated *supra*, each of the Defendants advised Plaintiff in a jointly agreed upon e-mail addressed to editor of The Westchester Guardian (Richard Blassberg):

“It has come to [our] attention that your firm has installed dispensing boxes for your paper in a few locations within the Village of Tuckahoe. Please note that the Tuckahoe Village Ordinance prohibits these type of dispensers.

Kindly have these dispensing machines removed from the

Village on or before this Friday, November 10, 2006”

A copy of that e-mail, as produced by Defendants is annexed hereto as Exhibit 2.

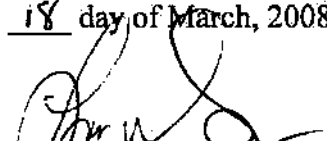
7. As a proximate result of the Defendants’ official interpretation of their relevant code provision, as well as the language of that code provision I was chilled in the exercise of my First Amendment rights and out of fear that Defendants would take code enforcement action, including possible criminal prosecution, against Plaintiffs ceased placing newsracks within the Village.

8. To date the Defendants have not returned to Plaintiffs the newsracks and/or the newspapers that were contained in those boxes as referenced *supra* in paragraphs “3” to “6”.

WHEREFORE an order should be entered granted, with respect to liability and against the Defendants, summary judgment.


Selim Zherka

Sworn to before me this
18 day of March, 2008.


Notary Public

LISA M. SUMMA
Notary Public, State of New York
No. 01SU6088151
Qualified in Westchester County
Commission Expires March 3, 2011

EXHIBIT 2

John D. Cavallaro

From: Ecklond@aol.com
Sent: Monday, November 06, 2006 8:04 AM
To: editor@westchesterguardian.com
Cc: mayormike@tuckahoe.com; Fitzland@aol.com; tony4ny@yahoo.com; louie2pp1@optonline.net; sciamarra@tuckahoe-ny.com; cavallarolaw@hotmail.com; robert.mascianica@verizon.net
Subject: Westchester Guardian Paper Dispensers

Dear Mr. Blassberg,

It has come to my attention that your firm has installed dispensing boxes for your paper in a few locations within the Village of Tuckahoe. Please note that the Tuckahoe Village Ordinance prohibits these type of dispensers.

Kindly have these dispensing machines removed from the Village on or before this Friday, November 10, 2006.

Thank you for your cooperation.

Steven A. Ecklond



Steven A. Ecklond, Trustee
Village of Tuckahoe
65 Main Street
Tuckahoe, NY 10707
(914) 961-3100